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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,201	04/04/2001	Gary Logston	TRAN.002A	2587
27299	7590	08/24/2004		
GAZDZINSKI & ASSOCIATES 11440 WEST BERNARDO COURT, SUITE 375 SAN DIEGO, CA 92127			EXAMINER	
			ALAM, UZMA	
			ART UNIT	PAPER NUMBER
			2157	

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/826,201	Applicant(s) LOGSTON ET AL.
	Examiner Uzma Alam	Art Unit 2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 April 2001.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-39 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04 April 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____. 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____.
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DETAILED ACTION

This action is responsive to the application filed April 4, 2001. Claims 1-39 are pending. Claims 1-39 represent a method and apparatus for controlling tailoring server resources based on configuration of the client.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 4-14, 17-26, 28, 29, 31-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Himmel US Patent No. 6,167,411. Himmel discloses the invention as claimed including a client device using an intercepting agent based on the capabilities of the client (see abstract).

As per claim 1, Himmel discloses a method of characterizing a processing device in a network having at least one first data processing device and at least one second processing device in data communication therewith, comprising:

downloading at least a portion of a distributed application to said at least one second processing device (downloading an application from a server; column 5, lines 63-67; column 6, lines 1-5; column 6, lines 44-65; column 7, lines 18-27);

starting said downloaded portion (starting the application; column 6, lines 44-65; column 8, lines 31-41);

querying said at least one second processing device for configuration information (checking the client for configuration information; column 5, lines 52-55; column 6, lines 64-67; column 7, lines 1-5; column 8, lines 52-67); and

transmitting at least a portion of said configuration information to said at least one first processing device (sending the information back to the server; column 5, lines 56-62; column 7, lines 6-10). See also Figure 1.

As per claim 2, Himmel discloses the method of Claim 1, wherein said at least one first data processing device comprises a server, and said at least one second processing device comprises a client device coupled to said server via a network, and said act of downloading comprises transferring said at least portion of said distributed application to said at least one client device via a communication channel associated with said network (the devices are set up as server and client; column 5, lines 15-51; column 6, lines 44-65).

As per claim 4, Himmel discloses the method of Claim 1, wherein said act of downloading comprises downloading said at least portion from a third device in data communication with said at least one second processing device (column 5, lines 15-51).

As per claim 5, Himmel discloses the method of Claim 4, further comprising:

transmitting at least one signal from said at least one first processing device to said third device (communicating between two devices; column 5, lines 15-51); and initiating said act of downloading based at least in part on said signal (downloading application; column 5, lines 32-51).

As per claim 6, Himmel discloses the method of Claim 5, wherein said act of transmitting at least one signal comprises transmitting said at least one signal over said network (column 3, lines 60-65).

As per claim 7, Himmel discloses the method of Claim 1, wherein said act of querying comprises:

transmitting a first message from said at least one first processing device to said at least one second processing device (sending messages between devices; column 6, lines 7-16; column 7, lines 28-31; column 8, lines 19-51); and

initiating, in response to said first message, a routine within said at least one client device adapted to determine said configuration information (checking configuration information when message is received; column 7, lines 32-39).

As per claim 8, Himmel discloses the method of Claim 1, wherein said act of querying comprises issuing a middleware call (calling an application; column 5, lines 15-51).

As per claim 9, Himmel discloses the method of Claim 7, wherein said act of transmitting at least a portion of configuration information comprises:

generating a message according to a predetermined format, said message comprising said at least portion of said configuration information (responding to the message with configuration information; column 8, lines 19-51); and

transmitting said message to said at least one first processing device via a communication channel (sending the message to the server; column 7, lines 32-39).

As per claim 10, Himmel discloses the method of Claim 1, wherein said act of transmitting at least a portion of configuration information comprises:

generating a message according to a predetermined format, said message comprising said at least portion of said configuration information (responding to the message with configuration information; column 8, lines 19-51); and

transmitting said message to said at least one first processing device via a communication channel (sending the message to the server; column 7, lines 32-39).

As per claim 11, Himmel discloses the method of Claim 10, wherein said act of transmitting said message comprises transmitting said message via a communication channel other than said network (column 7, lines 64-67; column 8, lines 1-14).

As per claim 12, Himmel discloses a method of characterizing a processing device in a network having at least one server and at least one client device in data communication therewith, comprising the steps of:

providing a distributed application having at least a server portion and a client portion, said distributed application being initially disposed at said at least one server (a server having a distributed application; column 5, lines 15-51, 63-67; column 6, lines 1-5, 44-65; column 7, lines 8-27);

downloading said at least client portion of said distributed application to said at least one client device to provide said at least client device with a predetermined functionality (downloading the application; column 4, lines 42-54; column 5, lines 63-67; column 6, lines 1-27; column 6, lines 44-65; column 7, lines 8-27);

starting said downloaded client portion (column 6, lines 44-65; column 8, lines 31-41);

querying said at least one client device to obtain configuration information therefrom using said client portion (checking the client for configuration information; column 5, lines 52-55; column 6, lines 64-67; column 7, lines 1-5; column 8, lines 52-67); and

generating a data structure containing at least a portion of said configuration information in response to said act of querying (column 6, lines 28-43).

As per claim 13, Himmel discloses a method of dynamically allocating a distributed application between a server and at least one client device, comprising:

providing said distributed application comprising a plurality of components (column 5, lines 15-67; column 6, lines 1-5, 44-67; column 7, lines 8-27);

selectively downloading at least a first component of said distributed application from said sever to said at least one client device (column 5, lines 63-67; column 6, lines 1-5, 44-65; column 7, lines 8-27);

determining the functionality of said at least one client after said downloading is completed (column 6, lines 18-27); and

successively downloading individual additional components of said application, and testing the functionality of said client thereafter each such successive download, until said client is determined to be functional (column 7, lines 11-25).

As per claim 14, Himmel discloses the method of Claim 13, wherein the act of determining the functionality comprises determining whether data may be transmitted between said at least one client device and said server via at least one communication channel (column 8, lines 28-43).

As per claim 17, Himmel discloses a method for operating a client device in a network having a server and a client device, comprising:

downloading a portion of a distributed application to said client device (downloading an application from a server; column 5, lines 63-67; column 6, lines 1-5; column 6, lines 44-65; column 7, lines 18-27);

initiating a software routine for starting said downloaded portion (starting the application; column 6, lines 44-65; column 8, lines 31-41);

querying said client device for configuration information using at least said downloaded portion (checking the client for configuration information; column 5, lines 52-55; column 6, lines 64-67; column 7, lines 1-5; column 8, lines 52-67); and

generating said configuration information specific to said client device (sending the information back to the server; column 5, lines 56-62; column 7, lines 6-10). See also Figure 1.

As per claim 18, Himmel discloses the method of Claim 17, further comprising configuring said client device based at least in part on said configuration information (column 6, lines 18-27).

As per claim 19, Himmel discloses the method of Claim 18, further comprising transmitting said client device configuration information to said server, and wherein the act of configuring comprises selectively downloading one or more additional distributed application components based on said transmitted configuration information (column 7, lines 11-25).

As per claim 20, Himmel discloses apparatus for profiling at least one client device, said at least one client device being operatively connected to a data network, comprising:

server means in data communication with said network (column 5, lines 15-51; column 6, lines 44-65);

means for communicating data to said client device means for determining the configuration of said client device, said means for determining being movable to said client

device via said means for communicating (getting client configuration information; column 5, lines 15-51; column 6, lines 44-65);

means for transmitting said means for determining from said server means to said client device (sending snooper to client; column 6, lines 7-16; column 7, lines 28-31; column 8, lines 19-51);

means for transmitting information regarding said client device configuration to said server means (sending configuration information to server; column 7, lines 32-39);

means for receiving said client device information at said server means (column 5, lines 56-62; column 7, lines 6-10); and

means for storing at least a portion of said client device information (column 5, lines 56-62; column 7, lines 6-10).

As per claim 21, Himmel discloses an apparatus for dynamically obtaining the configuration of a client device connected to a data network, comprising:

at least one server in data communication with at least one client device, said network (column 5, lines 15-51; column 6, lines 44-65);

a distributed application having at least a server portion and a client portion, said at least client portion being movable between said server and said client device, said at least client portion being adapted to communicate with said at least server portion (column 5, lines 15-51; column 6, lines 44-65);

a storage device operatively coupled to said at least one server (column 5, lines 56-62; column 6, lines 44-65);

wherein said at least client portion is adapted, when moved to said client device, to obtain configuration information regarding said client device, and transmit said configuration information to said server for storage in said storage device (column 6, lines 7-16; column 7, lines 28-39; column 8, lines 19-51).

As per claim 22, Himmel discloses the apparatus of Claim 21, wherein said at least server portion of said distributed application is further adapted to analyze said configuration information received from said client device, and determine, based on said analysis, additional software components to be downloaded to said client device (column 6, lines 18-27; column 7, lines 11-25).

As per claim 23, Himmel discloses a method of transferring configuration information relative to a processing device in data communication with a network, comprising:
querying said processing device using a first software process (checking the client for configuration information; column 5, lines 52-55; column 6, lines 64-67; column 7, lines 1-5; column 8, lines 52-67);
generating a data structure in response to said act of querying using a second software process, said data structure comprising a plurality of data fields, each of said fields comprising a plurality of data bits, wherein combinations of said bits within each field indicate configuration information related to said processing device (column 5, lines 56-62; column 6, lines 7-16; column 7, lines 6-39; column 8, lines 19-51).

As per claim 24, Himmel discloses a distributed application for use on a data network, comprising:

at least one server portion disposed on at least one of a plurality of servers of said network, said at least one server portion comprising a plurality of modules (column 5, lines 15-51; column 6, lines 44-65);

at least one client portion disposed on at least one of a plurality of client devices of said network, said at least one client portion comprising at least one module, and being adapted to obtain configuration information from said at least one client device and generate a data structure containing at least a portion of said configuration information (column 5, lines 15-51; column 6, lines 28-43);

at least one mutable module, said mutable module being adapted to run on either at least one of said plurality of servers or at least one of said plurality of client devices (column 5, lines 15-67; column 6, lines 1-5, 44-65; column 7, lines 8-27);

wherein said at least one mutable module is adapted to maintain at least one network partition (column 5, lines 56-62; column 7, lines 6-10)

As per claim 25, Himmel discloses the distributed application of Claim 24, wherein said at least one server portion is further adapted to receive said data structure and recognize said configuration information (column 6, lines 7-25; column 7, lines 28-39; column 8, lines 19-51).

As per claim 26, Himmel discloses the distributed application of Claim 24, wherein the location of said at least one mutable module is determined at least in part by said configuration information (column 6, lines 7-16; column 7, lines 28-39; column 8, lines 19-51).

As per claim 28, Himmel discloses a client device adapted for use on a data network, comprising:

a processor adapted to process digital data (column 5, lines 15-51; column 6, lines 44-65);

a first software routine configured to run on said processor, said first software routine being adapted to communicate with a corresponding software routine running on a remote processing device which is in data communication with said client device, said first software routine being further adapted to be movable between said remote processing device and said client device (column 5, lines 15-51; column 6, lines 44-65);

a second software routine configured to run on said processor, said second routine being adapted to determine information relating to the configuration of said client device and generate a data structure containing at least a portion of said information therein (column 5, lines 15-51; column 6, lines 44-65);

a storage device adapted to store digital data, said storage device being in data communication with said processor and capable of storing said data structure (column 5, lines 56-62; column 7, lines 6-10);

wherein said data structure may be transmitted to said remote processing machine (column 5, lines 56-62; column 7, lines 6-10).

As per claim 29, Himmel discloses the client device of Claim 28, wherein said first software routine is adapted to query said second software routine to determine said information (column 5, lines 52-55; column 6, lines 64-67; column 7, lines 1-5; column 8, lines 52-67).

As per claim 31, Himmel discloses a method of configuring a client device in a network having a server and at least one client device, comprising:

downloading a portion of a distributed application to said at least one client device (column 5, lines 63-67; column 6, lines 1-5; column 6, lines 44-65; column 7, lines 18-27);

initiating said downloaded portion (column 6, lines 44-65; column 8, lines 31-41);

querying said at least one client device for configuration information using at least said downloaded portion (column 5, lines 52-55; column 6, lines 64-67; column 7, lines 1-5; column 8, lines 52-67);

generating said configuration information specific to said at least one client device (column 5, lines 56-62; column 7, lines 6-10); and

re-configuring said at least one client device using said downloaded portion and said configuration information (column 7, lines 11-25).

As per claim 32, Himmel discloses an apparatus, comprising:

at least one server, said server having at least one first server portion of at least one distributed software application running thereon (column 5, lines 15-51; column 6, lines 44-65);

at least one client device, adapted for communication with said at least one first server portion via a data network, said at least one client device being further adapted to run at least one client portion of said at least one distributed software application thereon (column 5, lines 15-51; column 6, lines 44-65);

wherein said at least one client portion is configured to determine at least a portion of the hardware configuration of said client device and transmit information regarding said at least portion to said at least one first server portion (column 6, lines 18-27).

As per claim 33, Himmel discloses the apparatus of Claim 32, wherein said client device comprises a second server portion running on said at least one server (Figure 3).

As per claim 34, Himmel discloses the apparatus of Claim 32, wherein said client device comprises a second server portion running on a second server (Figure 3).

As per claim 35, Himmel discloses the apparatus of Claim 34, wherein said second server comprises part of the same server farm as said at least one server (Figure 3).

As per claim 36, Himmel discloses the appazatus of Claim 33, wherein said second server portion is configured to communicate with a second client device (Figure 3).

As per claim 37, Himmel discloses the apparatus of Claim 36, wherein said second client device is adapted to receive and run at least a portion of said distributed application (column 4, lines 42-54; column 5, lines 15-51; column 6, lines 1-27, 44-65; column 7, lines 18-27).

As per claim 38, Himmel discloses the apparatus of Claim 33, wherein said second server portion communicates with said first server portion using messages transmitted from said second server portion to said at least one first server portion, said messages utilizing a predetermined communications protocol (column 7, lines 32-39; column 8, lines 19-51).

As per claim 39, Himmel discloses the apparatus of Claim 36, wherein said second client device communicates with said at least one first server portion using messages transmitted from said second client device to said at least one first server portion, said messages utilizing a predetermined communications protocol (column 7, lines 32-39; column 8, lines 19-51).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Himmel US Patent No. 6,167,411 in view Ludtke International Publication No. WO 99/57889. Ludtke discloses the invention substantially as claimed including a method and access for conditional access on a communication network.

As per claim 3, Himmel discloses the method of claim 2. Himmel does not disclose wherein said network comprises a cable network, and said communication channel comprises an out-of-band (OOB) channel. Ludtke discloses an OOB channel. See page 7, page 10, lines 4-8; pages 11 and 15. It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine and OOB channel of Ludtke with the communication channel of Himmel. A person of ordinary skill in the art would have been motivated to do this to descramble a digital broadcast signal.

As per claim 15, Himmel discloses method of Claim 14. Himmel does not disclose wherein said first component comprises an out-of- band (OOB) communications module. Ludtke discloses an OOB channel. See page 7, page 10, lines 4-8; pages 11 and 15. It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine and OOB channel of Ludtke with the communication channel of Himmel. A person of ordinary skill in the art would have been motivated to do this to descramble a digital broadcast signal.

Claim 16 rejected under 35 U.S.C. 103(a) as being unpatentable over Himmel US Patent No. 6,167,411 in view of Ludtke International Publication No. WO 99/57889 as applied to claim 15 above, and further in view of Liva et al. US Patent Publication No. 2002/0136203. Liva

discloses the invention substantially as claimed including an enhanced cable modem termination system (see abstract).

Himmel discloses the method of Claim 15. Himmel does not disclose wherein said additional components comprise a cable modem (DOCSIS) communications module and telco modem communications module. Liva discloses a DOCSIS communications module and telco modem. See paragraphs 0015 and 0028. It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine a DOCSIS module of Liva with the communication method of Himmel. A person of ordinary skill in the art would have been motivated to do this to incorporate interoperability standards.

Claim 27 rejected under 35 U.S.C. 103(a) as being unpatentable over Himmel US Patent No. 6,197,441 in view of Britton et al. US Patent No. 6,654,814. Britton discloses the invention substantially as claimed including tailoring content for a session (see abstract).

Himmel discloses the method of configuring a client-server network having server resources and a plurality of client devices, and a distributed application adapted for use thereon, comprising:

downloading a client portion of said distributed application to said client device from said selected server (column 5, lines 63-67; column 6, lines 1-5; column 6, lines 44-65; column 7, lines 18-27);

starting said downloaded client portion at said client device (column 6, lines 44-65; column 8, lines 31-41);

querying said client device using said downloaded client portion to obtain configuration information relating thereto (column 5, lines 52-55; column 6, lines 64-67; column 7, lines 1-5; column 8, lines 52-67); and

downloading at least one software module to said client device based at least in part on said configuration information (column 5, lines 56-62; column 7, lines 6-10).

Himmel does not disclose:

providing a first process running within said server resources, said first process configured to obtain data relating to the usage of said server resources;

receiving, at said server resources, a server resource request from a client device;

selecting a server within said server resources based at least in part on said data from said first process; and

starting a server portion of said distributed application on said selected server.

Britton discloses providing a first process running within said server resources, said first process configured to obtain data relating to the usage of said server resources (column 3, lines 47-67; column 7, lines 49-67);

receiving, at said server resources, a server resource request from a client device (column 11, lines 1-25);

selecting a server within said server resources based at least in part on said data from said first process (column 12, lines 5-24);

starting a server portion of said distributed application on said selected server (column 12, lines 44-67).

It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the server resources of Britton with the configuration request of Himmel. A person of ordinary skill in the art would have been motivated to do this to provide session specific information.

Claim 30 rejected under 35 U.S.C. 103(a) as being unpatentable over Liva et al. US Patent Publication No. 2002/0136203. Liva discloses the invention substantially as claimed including an enhanced cable modem termination system (see abstract).

Himmel discloses the client device of Claim 29. Himmel does not disclose wherein said query comprises an Opencable middleware call. Liva discloses an Opencable middleware call. See paragraphs 0015, 0028 and 0 067. It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine an Opencable middleware call of Liva with the middleware call of Himmel. A person of ordinary skill in the art would have been motivated to do this to incorporate interoperability standards.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lee et al. US Patent No. 6,658,167.

Mighdoll et al. US Patent No. 6,662,218.

Moore et al. US Patent No. 6,310,601.

Kikinis US Patent No. 5,727,159.

Li. et al. US Patent No. 6,119,165.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Uzma Alam whose telephone number is (703) 305-8420. The examiner can normally be reached on Monday-Tuesday 11:30am-8pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (703) 308 - 7562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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A handwritten signature in black ink, appearing to read "SALEH NAJJAR". Below the signature, the words "PRIMARY EXAMINER" are printed in a smaller, bold, sans-serif font.